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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1170

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

and

POCAHONTAS STEAMSHIP COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR POCAHONTAS STEAMSHIP COMPANY IN OPPOSITION

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April 18, 1967

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 15-19) is reported at 368 F. 2d 107. The Board's Decision and Order in the unfair labor practice case (J.A. 3a-17a)[1]

[1] "J.A." refers to the Joint Appendix to the parties' briefs in the court below. Nine copies of the Joint Appendix were filed with the petition.

are reported at 154 NLRB 1785. The related Decision and Determination of Dispute pursuant to Section 10(k) of the Act (J.A. 19a-29a) are reported at 152 NLRB 676.

QUESTION PRESENTED

Petitioner's statement of the "Question Presented" erroneously assumes that the Board found, as a fact, that there was "no disagreement as to work assignment between" the two unions involved and, in consequence, Petitioner has formulated a question which does not exist. The Board's Order was based on its finding of fact that a dispute as to work assignment did exist between the two unions. Accordingly, the only question presented by this case is whether there is substantial evidence on the record considered as a whole to support that finding of fact.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*), are set forth at pp. 13-14 of the petition.

STATEMENT OF THE CASE

The facts are adequately stated in the Board's Brief in Opposition.[2]

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[2] We would note that, contrary to Petitioner's assertion that "No threats were made, and no pickets appeared" (Pet. 3), the record is replete with evidence to support the Board's finding (J.A. 9a) that both occurred. Picketing did occur, not only on April 16, 1964 (J.A. 43a-48a), but also on May 16, 1964 (J.A. 50a-51a, 54a-55a), on June 17, 1964 (J.A. 60a-62a), and on August 22, 1964 (J.A. 51a-52a, 63a-64a). The record is equally clear that direct threats were made to both Coslett (J.A. 52a) and the ship's captain (J.A. 75a, 77a) by Local 1291 business agents.

ARGUMENT

The Board has consistently read this Court's decision in *National Labor Relations Board* v. *Radio and Television Broadcast Engineers,* 364 U.S. 573 (hereafter *CBS),* to hold that competing claims for work must be advanced on behalf of two or more groups of employees before a jurisdictional dispute can exist within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act.[3] That construction of *CBS* is not challenged in this case.

Petitioner's assertion that the Board did not follow *CBS* (Pet. 5-12) is based upon the false premise that, because NMU "disclaimed" the work, Petitioner represented the only employee group that did claim it. The fact is, however, that the Board refused to give effect to NMU's "disclaimer"; it found that both NMU and Petitioner claimed the work for the respective groups which they represent. The "disclaimer" was rejected because the "hatch and beam" work is referred to in the collective bargaining agreement between Pocahontas and NMU as one of the bundle of duties for which the maritime crews receive monthly salaries. Since NMU made no offer in connection with its "disclaimer" to forego any part of the salaries due the maritime crews, the Board determined that NMU was not "giving up" anything by the "disclaimer" but was merely indicating a willingness that longshoremen should do—and be paid for—work for which the maritime crews were also being paid.

Accordingly, the Board found that both Petitioner and NMU claimed the right for the employees repre-

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[3] See, e.g., *Highway Truckdrivers & Helpers, Local 107 (Safeway Stores, Inc.),* 134 NLRB 1320.

sented by them to be paid for the performance of the "hatch and beam" work. So finding, the Board determined that both unions thus effectively claimed the right to the work. The Court of Appeals specifically sustained these findings, stating that:

> "Thus, a jurisdictional dispute between two groups of employees as to which is entitled to certain work is in essence a dispute as to which shall receive compensation for that work. . . . When, as in this case, one group insists that work, for which another group has contracted and is being paid, be assigned it, the fact that both groups are claiming pay for the same work suffices to create a jurisdictional dispute, and it is irrelevant that either group, or both, may manifest a willingness to take the pay and forego the work." (Pet. pp. 18-19).

CONCLUSION

There is no conflict with this Court's decision in *CBS*. No other basis for review is suggested by Petitioner and none exists. The petition should be denied.

Respectfully submitted,

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